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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-194545

DATE: April 28, 1980

MATTER OF: Arthur E. Quillo *Personal Name*
Request for
forfeited annual leave] - Reconsideration

DIGEST: Absent timely and written request for scheduling of leave subject to forfeiture, employee in Vietnam at end of 1974 leave year who forfeited 124 hours of annual leave may not have leave restored under public exigency provisions of 5 U.S.C. 6304(d)(1)(B). Agency's responsibility for scheduling leave is such that it must approve and schedule leave either at time requested by employee or at some other time. While agency's failure to schedule requested leave may constitute administrative error, in general, agency's responsibility arises only when employee has made formal and timely request for leave.

This action is in response to a request for reconsideration of our ~~decision~~ *was the subject of the* B-194545, June 15, 1979, which sustained the disallowance by our ~~Claims Division~~ of Mr. Arthur E. Quillo's claim for restoration of leave under 5 U.S.C. 6304(d)(1)(B) (1976). Upon appeal, Mr. Quillo contends that the denial of his claim based on his failure to submit a formal and timely request for scheduling the leave subject to forfeiture did not take into account the Navy's treatment of similar claims or its responsibility to assure the proper scheduling of his leave. For the reasons that follow, we find that neither of these arguments provides a basis for restoration of the 124 hours of annual leave he forfeited at the end of the 1974 leave year.

To Carriers

ACCORD

On November 13, 1974, the Chief, Personnel Division, issued a memorandum setting forth the determination of the Defense Attache in Saigon, Vietnam, that exigencies of the public service during the 1974 leave year had been such that some assigned employees had been and would be precluded from using their accrued leave. The instruction

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cited the law authorizing restoration of annual leave, Public Law 93-181, December 14, 1973, which added subsection (d) to 5 U.S.C. 6304, and set forth the requirements for scheduling leave subject to forfeiture to permit its restoration to a special leave account.

Mr. Quillo, who was evacuated from Vietnam in March 1975, had been assigned to the Defense Attache Office in Saigon during the greater part of leave year 1974. He claims that he was not allowed to use 124 hours of annual leave that he forfeited at the end of the 1974 leave year because of exigencies of the public business--specifically, the conditions then existing in Vietnam.

In response to Mr. Quillo's request for restoration of the 124 hours of annual leave, the Department of the Navy found that he had not provided evidence to support the approval of leave on specific dates or documentation of the reasons for cancellation of the approved leave as required by law and implementing regulations. The Navy's determination that Mr. Quillo's claim did not meet the documentation requirements for restoration of leave was upheld by our Claims Division's settlement of January 4, 1976.

Upon appeal from the Claims Division's determination, Mr. Quillo cited the fact that he verbally requested leave and explained that because of the hurried effort to phase out U.S. Government operations in Vietnam he did not formalize that request. In sustaining the Claims Division's determination, we noted in our decision of June 15, 1979, that Congress intended that leave be subject to restoration only where some formal documentation establishes that by a reasonable time before the end of the leave year the employee requested a certain amount of annual leave in advance and that such leave was not taken due to exigencies of the service or sickness of the employee. See H.R. Rep. No. 93-456, 93d Cong., 1st Sess. 9 (1973). This legislative history is reflected in the following requirement set forth at para. 5c.(3)(2) of the Attachment to FPM Letter 630-22:

* * * * The scheduling and, as necessary rescheduling of annual leave must be

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in writing. (In this regard, Standard Form 71, Application for Leave, may be used to document the actions, supplemented as required.) Documentation must include the following:

- " - The calendar date the leave was scheduled, i.e., approved by the official having authority to approve leave * * *."

We have held that this statutory scheduling requirement may not be waived or modified even where extenuating circumstances may exist. 56 Comp. Gen. 470 (1977) and Matter of FBI Special Agent, B-191540, December 8, 1978.

Our decision denying Mr. Quillo's claim for restoration of leave was based on the above authorities and the fact that Mr. Quillo had not requested in writing that the 124 hours of annual leave subject to forfeiture be scheduled before the end of the 1974 leave year. In appealing from that decision, Mr. Quillo suggests that the Department of the Navy has established a precedent for waiving the documentation requirements of 5 U.S.C. 6304(d)(1)(B) in the cases of individuals returning from Vietnam. He refers specifically to two former associates who he believes had leave restored under similar circumstances. We have contacted the Navy and have been advised that the two individuals referred to by Mr. Quillo did not in fact have leave subject to forfeiture at the end of the 1974 leave year, and thus were not similarly situated.

The additional argument posed by Mr. Quillo is that denial of his claim for restoration of leave places an undue burden on employees to formally request leave in light of the fact that FPM Letter 630-22 stresses that planning and scheduling of leave is the mutual responsibility of the employee and management. He refers to language such as the following discussion from subsection (1), para. 5c of the Attachment to FPM Letter 630-22, concerning the statutory requirement for scheduling annual leave in advance:

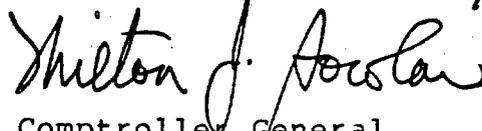
"(1) Discussion. This particular provision recognizes and re-emphasizes management's longstanding responsibility for the planning and effective scheduling of annual leave for use through the leave year. While employees also have an obligation to request annual leave in a timely manner, failure on their part to do so does not relieve management of its responsibility to assure that the leave is in fact scheduled for use. When an employee chooses not to request or to use annual leave to avoid forfeiture, he is not entitled to have the forfeited leave restored for later use."

As indicated in this instruction, the agency and the employee share responsibility for scheduling leave, and leave forfeited because of public exigency is subject to restoration only where the employee has made a "bona fide, formal and timely request for leave." H.R. Rep. No. 93-456, supra, pg. 6. The agency's responsibility is such that it must approve and schedule the leave either at the time requested by the employee or, if not possible because of the agency's workload, at some other time. Failure on the part of the agency to properly schedule requested leave constitutes an administrative error, which is itself a basis for restoration of forfeited leave under 5 U.S.C. 6304(d)(1)(A). See 57 Comp. Gen. 325 (1978). In general, however, an agency's mere failure to advise an employee of the scheduling requirement of 5 U.S.C. 6304(d)(1)(B) does not constitute administrative error under subsection (A) or otherwise warrant restoration of leave. 56 Comp. Gen. 470, supra. Compare 55 Comp. Gen. 784 (1976).

Since Mr. Quillo did not make a formal and timely request for leave, we are unable to find that he is entitled to restoration of leave on the basis of administrative error under 5 U.S.C. 6304(d)(1)(A) or under the

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public exigency provisions of subsection (d)(1)(B). Accord-
ingly, our decision of June 15, 1979, ~~is~~ sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For The Comptroller General
of the United States